

State Legislation Monitoring Report: FY2008

Iowa Department of Human Rights
Division of Criminal and Juvenile Justice Planning

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Introduction

The Division of Criminal and Juvenile Justice Planning issued its first state legislation monitoring report in February 2002, covering the first six months' impact of Senate File 543 (which enacted a number of sentencing changes) on the justice system; monitoring of the correctional impact of this bill was at the request of several members of the legislature. Since then, the Criminal and Juvenile Justice Planning Advisory Council has requested that CJJP monitor the correctional impact of enacted legislation of particular interest. This report covers monitoring results or future plans to monitor the following:

Drug commitments to prison, continuing evaluation of the impact of drug laws on the prison population. (See p.4).

Drug commitments to CBC, continuing evaluation of the impact of drug laws on the probation population. (See p.5).

Enticement of minors, internet offenses. (See p.5).

Baseline data for minority/gender differences in criminal charges/convictions. (See p.6).

Juveniles, Sex Offender Registry, and the Adam Walsh Act. (See p.7).

Contraband in Jails. (See p.11).

Summary of Findings

Drug commitments. The number of new commitments to prison for drug offenses decreased again in FY2008, mainly due to a continuing decrease in the number of commitments for methamphetamine. This represented the 4th year in which drug offense commitments fell. However, there appears to have been a slight increase in the number of new commitments for marijuana and crack cocaine. Drug admissions to probation have also decreased since FY05.

Enticement of minors. Although there has not been a legislative change in the Iowa Code on enticing minors away, the Internet has changed the manner in which some teens and younger children can be put in danger. Because of interpretation of the current language, law enforcement officials are concerned that convictions for felony enticement rather than misdemeanor attempts will be more difficult. A three-year look at convictions shows an inconsistent pattern at this point.

Baseline Data, Minority/Gender. The 2008 Iowa Legislature passed legislation requiring minority impact statements to be a part of all proposed legislation dealing with the justice system. (There were other requirements that are not covered here.) Baseline data are provided as an example of what will be tracked and analyzed during future Legislative sessions.

Juveniles/Sex Offender Registry. Juveniles in Iowa appear to have a very low rate of re-offending for sex offenses. In addition, adjudication for sex offenses under current Iowa law has repercussions that will last for the lifetime of the juvenile, irrespective of future non-conviction for sex offenses. Even with the modifications to the requirements of the Adam Walsh Act concerning mandatory registration for juveniles, the impact would be significant.

Responses by the juvenile court system to the consequences of adjudication and registration for juveniles are not known at this time. Interpretation of 692A.2A for delinquent juveniles could mitigate or escalate the consequences for juveniles.

Possession of Contraband in a Correctional Facility. While there was an increase in the number of convictions between FY2007 and FY2008, the number is not large enough to have a significant impact on the correctional system.

Drug commitments to prisons

Monitoring Plan. Due to the significant impact of methamphetamine and other drugs in Iowa, CJP staff were directed to compile regular data on the impact of drugs on Iowa's prison population.

In 2005 the Legislature passed S.F. 169, restricting the availability of pseudoephedrine and other precursors to methamphetamine manufacturing. Previous analyses have demonstrated the effectiveness of that measure in reducing the number of clandestine labs found, as well as the number of convictions for possession of precursors.

Data have been collected from the Iowa Corrections Offender Network (ICON) on inmates admitted for drug offenses since the start of state FY2005. Data were collected on the type of drug involved in new commitments whose lead charge involved drugs.

	FY2005	FY2006	FY2007	FY2008
Amphetamine	9	2	2	1
Cocaine (powder)	64	86	74	68
Cocaine (crack)	85	95	139	144
LSD	1	1	1	0
Marijuana	171	208	192	201
Methamphetamine	697	573	448	343
Other	8	8	7	10
RX	12	14	17	27
Unknown	2	1	1	1
Total	1,049	988	882	795

The trend indicates that meth-related admissions continued to drop during FY08. The decrease in meth-related admissions has led to an overall decrease in the number of admissions for drug-related crimes, even though there appears now to be an increase in the number of convictions and admissions for crack cocaine, marijuana, and prescription drugs.

To put this information into some perspective, the table below shows that new admissions of inmates whose most serious crimes were drug-related dropped slightly in FY2005, the first such drop in ten years. It has continued to drop since then.

	Fiscal Year							
Offense	2001	2002	2003	2004	2005	2006	2007	2008
Drug	904	966	1,096	1,110	1,055	988	882	795
Order	106	146	155	132	142	153	197	159
OWI	302	262	284	261	242	311	264	271
Property	1,059	1,070	1,130	1,070	1,044	1,095	1,043	964
Sex	269	258	235	214	261	264	233	205
Traffic	67	90	109	112	120	125	102	96
Violent	536	562	629	515	609	611	583	621
Weapon	56	53	67	34	56	63	54	34
Unknown	1	0	0	0	1	0	0	0
Total	3,300	3,407	3,705	3,448	3,530	3,610	3,358	3,145

It is evident that this decrease is continued in FY08.

A similar pattern is shown among admissions to probation field supervision. The table below presents data by most serious offense type:

Offense Type	FY02	FY03	FY04	FY05	FY06	FY07	FY08	% Change
Drug	3,471	3,979	4,001	4,179	3,854	3,623	3,463	-0.2%
Other	61	56	100	94	112	93	136	123.0%
OWI	4,188	4,078	4,500	5,331	5,286	5,172	5,555	32.6%
Property	3,031	3,199	3,484	3,382	3,517	3,534	3,667	21.0%
Public Order	388	422	438	463	575	504	563	45.1%
Sex	214	213	217	209	165	202	180	-15.9%
Traffic	471	500	623	687	721	643	638	35.5%
Violent	2,175	2,319	2,160	2,207	2,314	2,411	2,414	11.0%
Weapons	144	183	162	178	194	160	167	16.0%
Total	14,143	14,949	15,685	16,730	16,738	16,342	16,783	18.7%

While it's not feasible at this time to identify the drug associated with drug-related probation admissions, it's clear that the pattern of decreases seen for prison drug admissions since FY05 is also found among probation field supervision admissions.

Enticement of Minors.

Issue. One of the emerging criminal justice issues is that of internet predators. There has been an increase in public awareness of the potential harm that these individuals could cause by contacting teens through chat rooms and social networking sites.

Iowa Code 710.10 deals with the concept of enticing away minors. One section, 710.10(1) is a C felony, enticing a minor less than 13 years of age, for sexual abuse or exploitation. The other two sections are D felonies and aggravated misdemeanors respectively.

Law enforcement officials have suggested that efforts to combat internet enticement have been hampered because of interpretations of the Code when decoys are used to arrange "meets" with identified adults masquerading as teens. Convictions for the felony offenses are harder to obtain.

Monitoring Plan. The Justice Data Warehouse was used to look at the number of convictions over a three-year span. Following are the number of convictions for the three levels of enticement for the past three fiscal years.

	FY2006	FY2007	FY2008
CFEL, <13	3	1	0
DFEL, Enticement	9	19	4
AGMS, Attempt	5	14	16
TOTAL	17	34	20

Impact. Although new legislation amending the definitions was not passed during the 2008 Legislative session, this issue was requested for monitoring as there are plans to continue exploring this area with the Legislature.

Baseline Data.

Issue. The 2008 session of the Iowa Legislature passed an act requiring the Legislative Services Bureau, with assistance from the Division of Criminal and Juvenile Justice Planning, to include an analysis of the impact of any legislation on minorities. In preparation for the 2009 session of the Legislature, CJPJ created the following table to be used as a part of any analysis of proposed justice system legislation.

% Minorities for Charges, Convictions, and Prison Population, FY2008

*% Minority is based upon total offender count where the race is known, not the total offender count.

	Charges	Convictions	Prison Population
FELA			
Violent	42.2%	15.8%	27.5%
FELB			
Violent	34.6%	44.0%	29.3%
Drug	30.9%	34.3%	14.3%
Property	32.5%	37.9%	27.8%
Public Order	0.0%	100.0%	0.0%
Other	27.1%	29.4%	27.0%
FELC			
Violent	37.1%	38.6%	25.8%
Drug	40.2%	39.2%	35.6%
Property	26.2%	27.0%	36.7%
Public Order	24.2%	25.0%	20.0%
Other	21.1%	33.3%	8.3%
FELD			
Violent	33.4%	35.1%	26.9%
Drug	30.8%	29.4%	31.0%
Property	25.9%	25.5%	20.8%
Public Order	26.0%	28.2%	22.1%
Other	43.5%	50.0%	15.0%
AGMS			
Violent	32.7%	33.6%	28.6%
Drug	25.7%	28.5%	17.9%
Property	25.5%	28.7%	23.3%
Public Order	24.3%	23.3%	20.3%
Other	7.8%	7.4%	25.0%
SRMS			
Violent	30.5%	32.3%	5.6%
Drug	22.3%	23.6%	0.0%
Property	23.8%	24.8%	
Public Order	18.1%	16.8%	
Other	22.3%	18.8%	

Below is another way of looking at disparity, using ratios to determine relative risk for minorities for certain events that occur in the justice system. A ratio of 1 would indicate that the risk is identical between the two groups.

Adult Ratios between Minorities and Caucasians, selected Events

	2003	2004	2005	2006	2007
Ratio of minority rate to Caucasian rate					
Arrests	2.1	2.1	2.2	2.2	3.4
Case filings	2.8	2.9	3.2	3.4	5.4
Disposed charges	3.1	3.1	3.4	3.4	5.2
Deferred judgments	NA	NA	NA	0.79	0.92
Guilty	NA	NA	NA	1	0.79

NOTE: Deferred judgments prior to 2006 would be understated as records are expunged, and guilty counts would be over-represented. Therefore, calculations have not been made for those years.

Impact. It is clear that disparity exists within the system. These, and other data, will be used to respond to legislative requests for analysis, as well as monitoring any impact that other initiatives may have on the system.

Juveniles and the Sex Offender Registry, Residency Restrictions.

Issue. As a part of the on-going evaluation of Iowa's sex offender registry and residency restrictions, the Division of Criminal and Juvenile Justice Planning, Department of Human Rights evaluated the impact of those policies on juveniles who have been adjudicated of sex offenses during the past six years. The analysis also extends to what the effect of the implementation of the Adam Walsh act may have on juvenile offenders in the future.

Background. Iowa requires sex offenders to register for an initial period of 10 years. All sex offenses are included in the list of offenses that would require registration; although risk of recidivism is included on the Sex Offender Registry (SOR), Iowa law currently requires no assessment of risk to determine the need for registration. Iowa also restricts where sex offenders can live to outside 2,000 feet of the real property of a public or private elementary or secondary school or a child care facility. The residency restriction has no time limit. The Code states that individuals who "commit a criminal offense" against a minor is covered by the residency restriction [IA Code 692A.2A(1)]. Once convicted of a sex offense involving a minor victim, an individual would be subject to the residency restriction for life, irrespective of registration requirements.

Currently, juveniles are not required to be placed automatically on the SOR. Practices

may vary among the eight Judicial Districts, with offenders either placed on the SOR automatically with the possibility of removal after successful completion of probation/treatment, or placed on the SOR after supervision and evaluation determines that such registration should occur.

Current application of 692A.2A does not require juveniles adjudicated delinquent for a sex offense to live 2,000 feet from a school or child care facility. However, once they have reached the age of 18 and are no longer enrolled in secondary school, the restriction is deemed to apply for the rest of their lives.

In the legislative session in 2005, the Iowa General Assembly passed a number of changes to the Code sections dealing with sex offenders. These changes included increased penalties for adult offenders on selected offenses, requiring electronic monitoring of sex offenders, and 10-year or lifetime supervision for adult offenders convicted of sex offenses. At approximately the same time, the Courts ruled that the residency restrictions were allowable under the Iowa Constitution and could therefore be implemented.

Monitoring Plan. Two cohorts of juveniles were used: juveniles adjudicated for sex offenses during the state fiscal years of FY2003 through FY2005 (July 1, 2002 through June 30, 2005) and juveniles adjudicated for sex offenses during the state fiscal years of FY2006 through FY2008 (July 1, 2005 through June 30, 2008). These two groups were selected as representing equal time periods prior to and after the Code changes and implementation of the residency restrictions. Data were obtained from the Iowa Court Information System, Justice Data Warehouse.

Names of individuals on the SOR as of June 30, 2008 who were under 22 years of age were provided by the Department of Public Safety. This list was used to determine if offenders previously adjudicated as juveniles were currently on the Registry.

In addition, recidivism was investigated for the earlier cohort of juveniles who are currently on the Registry to determine general rates of recidivism and recidivism for sex offenses. It is assumed that individuals who are not currently on the Registry but were adjudicated as juveniles for sex offenses have not committed a subsequent sex offense. The second cohort was not investigated for recidivism because many of these individuals would still be juveniles or would not have had sufficient time elapse to gather meaningful information. Recidivism information was obtained from Iowa Courts Online.

Impact. During the 3-year period FY03-FY05, there were 350 juveniles adjudicated for sex offenses in Iowa. Of these, 47 were on the SOR as of June 30, 2008. During the 3-year period FY06-FY08, there were 312 juveniles adjudicated for sex offenses, with 27 of these on the SOR.

Juvenile Sex Offenders, Registration

	# Adjudicated	# on SOR	% on SOR
FY03-05	350	47	13.4%
FY06-08	312	27	8.6%
Total	662	74	11.1%

Of the 662 juveniles adjudicated for sex offenses from both cohorts, 588 have not been placed on the SOR at this time, neither as a consequence of their original adjudication nor for any subsequent sexual offense.

The number of juveniles adjudicated for sex offenses is smaller during the second cohort period than the first period. There have been anecdotal reports that juvenile courts are reluctant to adjudicate juveniles delinquent for sex offenses because of the long-term consequences. A further discussion of this point can be found in the Discussion section of this report.

As stated earlier, the first cohort of 350 juveniles was assessed for subsequent offenses. Eleven (3.1%) either had another adjudication for a sex offense during one of the two time periods, or had a consent decree revoked. These individuals were still minors at the time of the subsequent adjudication. It is unclear from the data source whether any of these constituted “new” offenses, or were part of the original juvenile complaint, so these are not included in the recidivism counts below. Ten of these individuals were not on the SOR as of June 30, 2008, so had not had a new offense as adults.

Of the FY03-FY05 cohort, 47 were on the SOR as of June 30. These registrants were evaluated for subsequent offenses, assuming that many of them would be adults at the time of the study and would have had three to six years to re-offend. Of the 47, 20 had no subsequent criminal cases filed against them. Another seven individuals had either failure to register or residency violations (public order offenses), but no other criminal offenses. Fourteen of the 47 had non-sex offense convictions in a variety of offense types, including theft, drug and/or alcohol, and assault. Six of the 47 had new sex offense charges; two of these had not been disposed as of this report.

Recidivism, FY03-FY05 Cohort on Registry

	#	%
No charges/convictions	20	42.5%
Public order only	7	14.8%
Other criminal	14	29.7%
Sex offense charges/convictions	6	12.7%
Total	47	100%*

* May not equal 100% due to rounding.

While the sex offense recidivism rate for those on the SOR is 12.7%, overall only the six identified above have been either charged or convicted of new sex offenses as adults, a sex offense recidivism rate for the FY03-FY05 cohort of 1.7% (6 out of 350).

Discussion. Research has suggested that juvenile sex offenders are more amenable to treatment than adults and pose a lower risk of re-offending. This appears to be borne out by these preliminary numbers as the overall recidivism rate is small. In addition, over three-fourths of the juveniles in the first cohort who are on the registry have not had a new sexual offense charge or conviction at the time of this report. However, according to current practice, 662 juveniles (both cohorts) who have been adjudicated for sex offenses cannot lawfully live within 2000 feet of a school or daycare center for the rest of their

lives. There may be a few of these juveniles whose offense may not have involved minor victims, but that number is not known at this time.

The Federal “Adam Walsh” Act expands Iowa’s current requirements for juvenile sex offenders. In that legislation, certain juveniles will be required to register without regard to juvenile court discretion. Mandatory registration would be required for any juvenile who was 14 or older at the time of the offense, if the offense included force or incapacitation. These offenses, in Iowa Code, include some definitions of Sex Abuse 2nd and Sex Abuse 3rd (709.3 and 709.4 respectively).

There are also definitions within those Iowa Code sections that may not be subject to the Adam Walsh requirements. However, at this time the database does not distinguish among the sub-definitions. So the following data should be considered high-end estimates, rather than true estimates, of the potential impact on juveniles.

Potential Number of SOR Registrants under Adam Walsh

	Total # Adjudicated	# Meeting Fed. Criteria	%
FY03-FY05	350	193	55.1%
FY06-FY08	312	179	57.3%

Iowa Code 709.3, Sex Abuse 2nd, is also used if the victim is under 12 years of age. Iowa Code 709.4, Sex Abuse 3rd, includes victim age as part its definition as well. As juveniles tend to be sexually involved with peers, it has been suggested that this leads to the use of 709.3 or 709.4 for that reason, not because force was used. However, one of the changes in Iowa Code that occurred at the beginning of FY06 was the ability to charge juveniles with Lascivious Acts with a Child rather than Sex Abuse 2nd or 3rd. If that change allowed for more “accurate” charging and adjudication, then one would expect a drop in the number of juveniles adjudicated for Sex Abuse 2nd and 3rd. While the overall number of juveniles adjudicated was lower, there was an increase in the percentage of juveniles convicted of the offenses requiring registration in the second cohort.

Based upon the data available at this time, it would seem that any changes to the methodology for placing juveniles on the SOR would have significant negative effects on the future ability of juveniles to establish stable life styles. With the overall recidivism for sex offenses as low as 2% for juveniles, lifetime registration does not appear to be justified.

In addition, the current practice requiring lifetime residency restrictions upon turning 18 for all juvenile offenders does not appear to be supported by the data.

Given the potential negative impact of required registration and residency restrictions, another concern is that the juvenile system may respond by not using sex offense codes in alleging and adjudicating delinquent behaviors even when appropriate. While this could be seen as solving one problem, it would create another by restricting access to sex offender treatment. There has been anecdotal evidence suggesting that juveniles increasingly are not being adjudicated for sex offenses, an approach providing one explanation for the decrease seen from FY03-FY05 to FY06-FY08. There was a 10% reduction in the number of juveniles adjudicated for sex offenses between the two

cohorts, and a 42.5% reduction in the number of juveniles on the SOR.

During the same time periods, there was a 4.9% reduction overall (from 17,056 to 16,209) in the number of juveniles adjudicated for any offense. At this time, it would be difficult to determine the underlying causes of the reductions specific to sex offenses in light of the overall reduction in juvenile adjudications.

Contraband.

Issue. The definition for possession of contraband in a correctional facility was expanded in FY2008 to include city and county jails. It was anticipated that there could be a significant increase in the number of charges and convictions, with a resulting increase in the number of days in jail or prison.

Monitoring Plan. The Justice Data Warehouse was used to look at changes in the number of convictions for the 2 years prior to the change in definition, and FY2008, the first year of implementation.

	FY2006	FY2007	FY2008
CFEL, weapon	0	1	1
DFEL, contraband	9	8	17
TOTAL	9	9	18

Impact. While the numbers indicate an increase in convictions, at this time there does not appear to be such a large increase that there would be a significant impact on the correctional system.